

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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	:
JORGE IRIZARRY,	:
Petitioner,	:
	:
- v. -	:
	17 Cr. 283 (LAP)
	:
	23 Cv. 237 (LAP)
UNITED STATES,	:
Respondent.	:
	:
-----	x

**ORDER REGARDING ATTORNEY-CLIENT PRIVILEGE WAIVER  
(INFORMED CONSENT)**

WHEREAS Defendant Jorge Irizarry (the “Defendant”) has filed a motion (the “Motion”) pursuant to 28 U.S.C. § 2255 on the ground that his former counsel, Kelley Sharkey, Esq., Louis Freeman, Esq., and Karloff Commissiong, Esq., (together, “Prior Counsel”) provided ineffective assistance of counsel in connection with Irizarry’s conviction and sentencing;

WHEREAS the Government, after reviewing the motion papers, has concluded that Prior Counsel’s testimony will be needed in order to allow the Government to respond to certain aspects of the Motion;

WHEREAS the Court, after reviewing the motion papers, is satisfied that Prior Counsel’s testimony is needed in order to allow the Government to fully respond to the Motion;

WHEREAS the Court is cognizant that, absent court order or informed consent, ethical concerns may inhibit Prior Counsel from disclosing confidential information relating to a prior client even in the absence of a privilege, *see, e.g.*, ABA Standing Comm. on Ethics and Prof. Responsibility Formal Op. 10-456 (July 14, 2010), *Disclosure of Information to Prosecutor When Lawyer’s Former Client Brings Ineffective Assistance of Counsel Claim*; and

WHEREAS by making the Motion, the Defendant has waived as a matter of law the attorney-client privilege with respect to the issues necessary to resolve the Motion;

WHEREAS the Defendant signed and returned a waiver of attorney-client privilege on March 28, 2023, (see 17-cr-283, dkt. no. 576),

IT IS HEREBY ORDERED that Prior Counsel shall give sworn testimony, in the form of an affidavit, addressing the allegations of ineffective assistance of counsel made by the Defendant; and it is further

ORDERED that the Government shall promptly serve this order on Prior Counsel; and it is further

ORDERED that the Government shall file a response to the unresolved aspects of the Motion within 60 days of the date that all affidavits of Prior Counsel are made available to the Government.

Dated: New York, New York

September 11, 2024

*Loretta A. Preska*  
HONORABLE LORETTA A. PRESKA  
UNITED STATES DISTRICT JUDGE